

## Subpart A—Restrictions on Post-Employment Activities of Senior Examiners

### § 390.1 What does this subpart do?

This subpart implements section 10(k) of the Federal Deposit Insurance Act (FDIA), (12 U.S.C. 1820(k)), which prohibits senior examiners from accepting compensation from certain companies following the termination of their employment. Except where otherwise provided, the terms used in this subpart have the meanings given in section 3 of the FDIA (12 U.S.C. 1813).

### § 390.2 Who is a senior examiner?

An individual is a senior examiner for a particular savings association or savings and loan holding company if—

(a) The individual was an officer or employee of the Office of Thrift Supervision (OTS) (including a special government employee) who was authorized by the OTS to conduct examinations or inspections of savings associations or savings and loan holding companies;

(b) The individual was assigned continuing, broad and lead responsibility for the examination or inspection of that savings association or savings and loan holding company; and

(c) The individual's responsibilities for examining, inspecting, or supervising that savings association or savings and loan holding company:

(1) Represented a substantial portion of the individual's assigned responsibilities at the OTS; and

(2) Required the individual to interact on a routine basis with officers and employees of the savings association, savings and loan holding company, or its affiliates.

### § 390.3 What post-employment restrictions apply to senior examiners?

(a) *Prohibition*—(1) *Senior examiner of savings association*. An individual who served as a senior examiner of a savings association for two or more of the last 12 months of his or her employment with OTS may not, within one year after the termination date of his or her employment with OTS, knowingly accept compensation as an employee, officer, director, or consultant from—

(i) The savings association; or

(ii) A savings and loan holding company, bank holding company, or any other company that controls the savings association.

(2) *Senior examiner of a savings and loan holding company*. An individual who served as a senior examiner of a savings and loan holding company for two or more of the last 12 months of his or her employment with OTS may not, within one year after the termination date of his or her employment with OTS, knowingly accept compensation as an employee, officer, director, or consultant from—

(i) The savings and loan holding company; or

(ii) Any depository institution that is controlled by the savings and loan holding company.

(b) [Reserved]

(c) *Definitions*. For the purposes of this section—

*Consultant*. An individual acts as a consultant for a savings association or other company only if he or she directly works on matters for, or on behalf of, the savings association or company.

*Control*. Control has the same meaning given in 12 CFR part 391, subpart E.

### § 390.4 When will the FDIC waive the post-employment restrictions?

The post-employment restriction in § 390.3 will not apply to a senior examiner if the Chairperson, or his or her designee, certifies in writing and on a case-by-case basis that a waiver of the restriction will not affect the integrity of the FDIC's supervisory program.

### § 390.5 What are the penalties for violating the post-employment restrictions?

(a) *Penalties*. A senior examiner who violates § 390.3 shall, in accordance with 12 U.S.C. 1820(k)(6), be subject to one or both of the following penalties:

(1) An order—

(i) Removing the person from office or prohibiting the person from further participating in the conduct of the affairs of the relevant depository institution, savings and loan holding company, bank holding company or other company for up to five years, and

(ii) Prohibiting the person from participating in the affairs of any insured

## Federal Deposit Insurance Corporation

## § 390.12

depository institution for up to five years.

(2) A civil money penalty not to exceed \$250,000.

(b) *Scope of prohibition orders.* Any senior examiner who is subject to an order issued under paragraph (a)(1) of this section shall be subject to 12 U.S.C. 1818(e)(6) and (7) in the same manner and to the same extent as a person subject to an order issued under 12 U.S.C. 1818(e).

(c) *Procedures.* 12 U.S.C. 1820(k) describes the procedures that are applicable to actions under paragraph (a) of this section and the appropriate Federal banking agency authorized to take the action, which may be an agency other than the FDIC. Where the FDIC is the appropriate Federal banking agency, it will conduct administrative proceedings under subpart C of this part.

(d) *Other penalties.* The penalties under this section are not exclusive. A senior examiner who violates the restriction in § 390.3 may also be subject to other administrative, civil, or criminal remedy or penalty as provided by law.

### Subpart B—Removals, Suspensions, and Prohibitions Where a Crime Is Charged or Proven

#### § 390.10 Scope.

The rules in this subpart apply to hearings, which are exempt from the adjudicative provisions of the Administrative Procedure Act, afforded to any officer, director, or other person participating in the conduct of the affairs of a State savings association, where such person has been suspended or removed from office or prohibited from further participation in the conduct of the affairs of the State savings association by a Notice or Order served by the Board of Directors upon the grounds set forth in section 8(g) of the Federal Deposit Insurance Act (FDIA), (12 U.S.C. 1818(g)).

#### § 390.11 Definitions.

As used in this subpart—

(a) The term *Board of Directors* means the Board of Directors of the FDIC or its designee.

(b) The term *Notice* means a Notice of Suspension or Notice of Prohibition issued by the Board of Directors pursuant to section 8(g) of the FDIA.

(c) The term *Order* means an Order of Removal or Order of Prohibition issued by the Board of Directors pursuant to section 8(g) of the FDIA.

(d) The term *association* means a State savings association within the meaning of section 3(b)(3) of the FDIA, (12 U.S.C. 1813(b)(3)).

(e) The term *subject individual* means a person served with a Notice or Order.

(f) The term *petitioner* means a subject individual who has filed a petition for informal hearing under this part.

#### § 390.12 Issuance of Notice or Order.

(a) The Board of Directors may issue and serve a Notice upon an officer, director, or other person participating in the conduct of the affairs of an association, where the individual is charged in any information, indictment, or complaint with the commission of or participation in a crime involving dishonesty or breach of trust that is punishable by imprisonment for a term exceeding one year under State or Federal law, if the Board of Directors, upon due deliberation, determines that continued service or participation by the individual may pose a threat to the interests of the association's depositors or may threaten to impair public confidence in the association. The Notice shall remain in effect until the information, indictment, or complaint is finally disposed of or until terminated by the Board of Directors.

(b) The Board of Directors may issue and serve an Order upon a subject individual against whom a judgment of conviction, or an agreement to enter a pretrial diversion or other similar program has been rendered, where such judgment is not subject to further appellate review, and the Board of Directors, upon the deliberation, has determined that continued service or participation by the subject individual may pose a threat to the interests of the association's depositors or may threaten to impair public confidence in the association.